



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 13717696

DATE: MAR. 19, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for an Advanced Degree Professional

The Petitioner, a consulting and professional services business, seeks to employ the Beneficiary in the position of “senior manager, customer & marketing, customer strategy & applied design.” It requests advanced degree professional classification for the Beneficiary under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition on the ground that the evidence of record did not establish that the Beneficiary met the minimum requirements of the labor certification to qualify for the proffered position and the requested visa classification.

On appeal the Petitioner submits additional documentation relating to the Beneficiary’s experience and asserts that the evidence of record establishes that he meets the minimum educational and experience requirements of the labor certification to qualify for the proffered position and advanced degree professional classification.

In visa petition proceedings it is the Petitioner’s burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

## **I. LAW**

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

The term “advanced degree” is defined in the regulation at 8 C.F.R. § 204.5(k)(2) as follows:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

The regulations at 8 C.F.R. § 204.5(k)(3)(i) state that a petition for an advanced degree professional must be accompanied by either:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, a beneficiary must meet all of the education, training, experience, and other requirements specified on the labor certification as of the petition's priority date.<sup>1</sup> *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

## II. ANALYSIS

The labor certification in this case specifies the following in section H (Job Opportunity Information) regarding the requirements for the position of senior manager, customer & marketing, customer strategy & applied design:

- |       |                                                                     |                   |
|-------|---------------------------------------------------------------------|-------------------|
| 4.    | Education: Minimum level required:                                  | Bachelor's degree |
| 4-A.  | Major field of study                                                | See H.14          |
| 5.    | Is training required for the job?                                   | No                |
| 6.    | Is experience in the job offered required?                          | Yes               |
| 6-A.  | How long?                                                           | 60 months         |
| 7.    | Is an alternate field of study acceptable?                          | Yes               |
| 7-A.  | What field(s)?                                                      | See H.14          |
| 8.    | Is an alternate combination of education and experience acceptable? | Yes               |
| 8-A.  | What level of education?                                            | Master's degree   |
| 8-C.  | How much experience?                                                | 3 years           |
| 9.    | Is a foreign educational equivalent acceptable?                     | Yes               |
| 10.   | Is experience in an alternate occupation acceptable?                | Yes               |
| 10-A. | How long?                                                           | 60 months         |
| 10-B. | What job title(s)?                                                  | See H.14          |

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<sup>1</sup> The priority date of an employment-based immigrant petition is the date the underlying labor certification was filed with the DOL. 8 C.F.R. § 204.5(d). In this case the priority date is July 24, 2019.

14. Specific skills or other requirements:

Bachelor's degree or foreign equivalent degree in Business Administration, Business, Commerce, or a related field. Five years of progressively responsible experience as a Manager, as a Senior Consultant, or a position in a related occupation. Must have five years of experience with: Setting corporate and business unit strategies for clients by developing future state growth scenarios, conducting enterprise value and value chain analyses, market and competitor analyses, project and portfolio planning, and investment capital allocation planning; Managing large, enterprise-wide cost transformation initiatives covering key functions sales, marketing, manufacturing, and supply chain; Managing large scale, cross-functional product development and implementation projects; Leading project objectives and timely completion of client deliverables; Developing proprietary methods, tools, and intellectual property. In the alternative, the employer will accept a Master's degree or foreign equivalent degree in a stated field plus three years of experience. Any suitable combination of education, training, or experience is acceptable.

Thus, the minimum educational and experience requirements of the labor certification are either (1) a U.S. bachelor's or foreign equivalent degree in business administration, business, commerce, or a related field of study, plus five years of experience as a manager, senior consultant, or related position, including the specific experience described in section H.14; or (2) a U.S. master's or foreign equivalent degree in one of the stated fields of study, plus three years of experience in one of the stated occupational fields, including the specific experience described in section H.14.

The record includes copies of two sets of transcripts and diplomas showing that the Beneficiary earned (1) a Bachelor of Technology in Mechanical Engineering from [redacted] Institute of Technology in [redacted] India, on August 12, 2006, following completion of a four-year degree program, and (2) a two-year Post-Graduate Diploma (PGD) in Management from the [redacted] Institute of Management Society in [redacted] India, on March 22, 2011. The record also includes an academic equivalency evaluation from The Trustforte Corporation asserting that the Beneficiary's PGD in Management, following his four-year bachelor of technology degree, is comparable to a bachelor's degree in business administration from a U.S. college or university. Based on the foregoing documentation we find that the Beneficiary meets the minimum educational requirement of the labor certification as well as the minimum educational requirement to qualify for classification as an advanced degree professional.

Since the Beneficiary has a foreign equivalent degree to a U.S. bachelor's degree, under the terms of the labor certification and the requirements of 8 C.F.R. § 204.5(k)(3)(i) he must have at least five years of post-baccalaureate experience to qualify for the proffered position and advanced degree professional classification. Section K of the labor certification (Alien Work Experience) lists two jobs for the Beneficiary that post-dated his qualifying educational degree in March 2011<sup>2</sup> and pre-dated the

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<sup>2</sup> Experience that predates the awarding of the Beneficiary's baccalaureate level degree is not qualifying experience in a petition for advanced degree professional classification because it is not "post-baccalaureate experience" as required by

commencement of his job with the Petitioner (listed at section K.a of the labor certification) as Manager, Customer & Marketing, Customer Strategy & Applied Design, in [redacted] California, assertedly on September 24, 2017.<sup>3</sup> The two jobs listed in this qualifying the time period from March 2011 to September 2017 are the following:

- [redacted] in [redacted] India – where the Beneficiary claims to have worked as a consultant from April 25, 2011, to August 31, 2013 (section K.c of the labor certification).
- [redacted] (the Petitioner) in [redacted] Pennsylvania – where the Beneficiary claims to have worked as a manager from May 16, 2016, to September 23, 2017 (section K.b of the labor certification).

With its initial evidence the Petitioner submitted a letter from a human resources official (HR letter) of [redacted] in [redacted] dated August 25, 2018, stating that the Beneficiary was employed by [redacted] as:

- (1) a consultant from April 25, 2011, to August 31, 2013;
- (2) a senior consultant from September 1, 2013, to August 31, 2015; and
- (3) a manager from September 1, 2015, to September 23, 2017.

The HR letter described the Beneficiary's duties in each position, which incorporated the specific experience required in section H.14 of the labor certification, and also stated that while on the employee roster of [redacted] the Beneficiary was "seconded" to the Petitioner for five time periods:

- (1) from September 15 to December 19, 2014;
- (2) from January 12 to April 9, 2015;
- (3) from August 10 to September 25, 2015;
- (4) from January 19 to March 18, 2016; and
- (5) from May 16, 2016, to September 23, 2017.

The letter did not specify what kind of work the Beneficiary did for the Petitioner during these assignments or where it was performed. Thus, the HR letter from [redacted] was inconsistent with the labor certification insofar as it identified a period of employment of the Beneficiary by the Petitioner as a senior consultant from September 2013 through August 2015 that was not listed in the labor certification, and also insofar as it identified four work assignments with the Petitioner between

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<sup>8</sup> C.F.R. § 204.5(k)(3)(i)(B). Thus, the Beneficiary's asserted experience as a deputy manager with [redacted] in [redacted] India, from July 3, 2006, to May 28, 2009 – listed at section K.d of the labor certification – is not qualifying experience in this petition.

<sup>3</sup> Section J.21 of the labor certification indicates that the Beneficiary did not gain any qualifying experience with the Petitioner in a position substantially comparable to the proffered position in this proceeding. Therefore, the Beneficiary's managerial position with the Petitioner commencing in September 2017 is not qualifying experience in this petition.

September 2014 and March 2016, during a time when the Beneficiary was on the employee roster of [REDACTED] that were likewise not listed in the labor certification.

In a request for evidence (RFE) the Director noted that not all of the experience described in the HR letter from [REDACTED] was claimed in the labor certification, contrary to the section K instructions to list any experience that qualifies the Beneficiary for the job opportunity.<sup>4</sup> The Director also noted that the jobs listed with [REDACTED] from April 2011 to August 2013 and with the Petitioner from May 2016 to September 2017 amounted to less than five years of experience. The Director requested that the Petitioner submit documentation such as tax records, employment records, pay stubs, or Wage and Tax Statements (Forms W-2) to clarify the Beneficiary's employment history.

In response to the RFE the Petitioner submitted a letter from its immigration manager in [REDACTED] dated May 7, 2020, that compared the job duties performed by the Beneficiary in the three jobs he held with [REDACTED] – as a consultant (April 25, 2011, to August 24, 2013), as a senior consultant (August 25, 2013, to August 22, 2015), and as a manager (August 23, 2015, to September 23, 2017).

In denying the petition the Director indicated that the Petitioner had not submitted any evidence to explain the discrepancy between the labor certification and the employment verification letter(s) with respect to the Beneficiary's employment history, and did not enhance the credibility of the claimed experience that was not listed in the labor certification. The Director concluded that the evidence of record did not establish that the Beneficiary met the minimum requirements of the labor certification – specifically, five years of qualifying experience to go along with his baccalaureate degree – to qualify for the proffered position and the requested visa classification of advanced degree professional.

On appeal the Petitioner asserts that there was no conflict between the labor certification and the initial letter from [REDACTED] regarding the Beneficiary's employment history because the positions listed in the labor certification (consultant and manager) were included in the fuller employment history described in the initial [REDACTED] letter. That claim may be true, but does not explain why the fuller employment history claimed for the Beneficiary in the HR letter from [REDACTED] was not included in the labor certification, which specifically instructed all qualifying employment to be listed in section K. As further evidence of the Beneficiary's employment history, the Petitioner submits a letter from [REDACTED] who states that he is currently a principal at [REDACTED] and claims that "I was [the Beneficiary]'s direct supervisor when he was employed with [REDACTED] from April 25, 2011 to September 23, 2017." The evidentiary weight of this letter is lessened by the fact that it does not meet all of the substantive requirements 8 C.F.R. § 204.5(g)(1), which provides that employment verification letters "shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien." The letter from [REDACTED] does not include an address and does not specifically describe the Beneficiary's job duties from 2011 to 2017.

The Petitioner also submits copies of what it claims to be the Beneficiary's employment history as recorded in its HR user-portal, TalentOnDemand. None of the four pages, however, identifies the employee to whom the records apply. The Petitioner submits copies of a letter from [REDACTED] to

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<sup>4</sup> The failure to list specific jobs in the labor certification lessens the credibility of the asserted work experience. *See Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976).

the Beneficiary, dated February 18, 2011, offering him the position of consultant in [redacted] beginning on April 25, 2011, and two subsequent employment contracts between the Beneficiary and [redacted] in [redacted] promoting the Beneficiary to senior consultant on September 1, 2013, and to manager on September 1, 2015. These contracts appear to identify the work location as [redacted] which differs from information in the labor certification and the employment verification letters which identify an address for [redacted] in [redacted]. We note that [redacted] and [redacted] are 310 air miles and 352 road miles apart. *See distancecalculator.net/from* [redacted] (last visited March 16, 2021).

Finally, the Petitioner submits six years of the Beneficiary's income tax records in India for the assessment years of 2012-2013 to 2017-2018. All of these tax documents identify the Beneficiary's employer as [redacted] but do not specify the Beneficiary's employment location. The tax documents indicate different residential addresses for the Beneficiary during those years – from [redacted] in 2012-2013, to [redacted] in 2013-2016, to [redacted] in 2016-2017, to [redacted] California, in 2017-2018 (as indicated on a tax document dated July 31, 2017). This latter address in California, assertedly in July 2017, conflicts with information in section K.b of the labor certification which states that the Beneficiary was employed at that time (actually from May 16, 2016, to September 23, 2017) by the Petitioner in [redacted] Pennsylvania. Moreover, the Petitioner has not explained how the Beneficiary's three different residential addresses in India during the years 2012-2017 mesh with the business addresses for [redacted] identified in this petition, and how the Beneficiary could have worked for [redacted] in either [redacted] or [redacted] while residing in [redacted] (2013-2016) or [redacted] (2016-2017).

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. *See id.*

As discussed above, the Petitioner has not resolved many evidentiary inconsistencies in this petition. The evidence of record is confusing as to where the Beneficiary resided and worked while ostensibly employed by [redacted] from 2011 to 2017, and does not explain how he could have resided in one place while working in another for most of those years. The evidence is unclear as to where the Beneficiary worked during the nine and a half months he was "seconded to [redacted]" (a term not explained by the Petitioner) between September 2014 and March 2016. Furthermore, the record is conflicting as to where the Beneficiary worked during the fifth and final time he was "seconded" by [redacted] to the Petitioner from May 2016 to September 2017, since the labor certification identifies an address in [redacted] Pennsylvania, while the Indian tax document from July 2017 identifies the Beneficiary's work address as located in [redacted] California. Finally, the Petitioner has not explained why the labor certification does not list all of the qualifying experience which the Petitioner subsequently claimed for the Beneficiary in documentation submitted with and after the filing of the petition.

Due to these evidentiary infirmities, we determine that the Petitioner has not established that the Beneficiary gained at least five years of qualifying experience with [redacted] As previously

indicated, in visa petition proceedings it is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

### III. CONCLUSION

The Petitioner has not established that the Beneficiary gained at least five years of qualifying experience before the priority date of July 24, 2019, as required to qualify for the proffered position under the terms of the labor certification and to qualify for the requested visa classification of advanced degree professional in accordance with the requirements of 8 C.F.R. § 204.5(k)(3)(i)(B). The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.